CASE NO.	**VOL. NO.**	**PAGE**
JONES POWER CO. LIMITED, a body corporate, and J.A. JONES CONSTRUCTION COMPANY, a body corporate	- and -	MITSUI & CO. (POINT ACONI) LTD., a body corporate
(Appellants)		(Respondent)
CA 169750	Halifax, N.S.	HALLETT, J.A.

[Cite as: Mitsui & Co. (Point Aconi) Ltd. v. Jones Power Co., 2001 NSCA 112]

APPEAL HEARD: June 5, 2001

JUDGMENT DELIVERED: July 11, 2001

SUBJECT: **Courts - Judges - Disqualification - Bias, reasonable apprehension of bias**

SUMMARY: The appellants and the respondent were involved in the construction of the Point Aconi power plan. After the completion of the project, litigation was commenced.

One issue was severed and a first trial was held to determine whether the Memorandum of Understanding (MOU) was legally binding upon the parties. That decision is now final and the MOU has been held to be legally binding.

A second trial was anticipated on the issue of the interpretation of the MOU. The trial judge who was also the case management judge made comments during a case management meeting on September 27, 2000 regarding the MOU. These comments were also part of the memorandum of the conference faxed to the parties. The appellant, Jones Power, asserted that these comments amounted to a pre-judgment of the issues and asked the trial judge to recuse himself. The trial judge refused.

An application was brought by Jones Power for recusal. The trial judge dismissed the application

RESULT: Leave to appeal is granted and the appeal is allowed. The comments of the trial judge create a reasonable apprehension of bias. The test to be applied is that of Justice Cory in **R. v. S.(R.D.)**, [1997] 3 S.C.R. 484. The comments made by the trial judge at the case management conference, confirmed in the conference memo and reiterated in the recusal decision, together meet the test.